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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANA GOLD, TAMMY EMERY, EDWIN  
 MENDEZ, CHRISTOPHER MASSARO,  
 LAURA NORRIS, DONALD FURSMAN,  
 and JOHN TRIANA, on behalf of themselves  
 and all others similarly situated,

Plaintiffs,

v.

LUMBER LIQUIDATORS, INC., a Delaware  
 corporation; and DOES 1 through 200, inclusive,

Defendants.

No. 3:14-cv-05373-TEH

**THIRD AMENDED CLASS  
 ACTION COMPLAINT**

CLASS ACTION

JURY TRIAL DEMAND

The Honorable Thelton E. Henderson

Complaint Filed: December 8, 2014

1 Through the undersigned counsel, Plaintiffs DANA GOLD, TAMMY EMERY,  
2 EDWIN MENDEZ, CHRISTOPHER MASSARO, LAURA NORRIS, DONALD FURSMAN,  
3 and JOHN TRIANA on behalf of themselves and all others similarly situated (“Plaintiffs”), file  
4 this third amended class action complaint against Defendant Lumber Liquidators, Inc.  
5 (“Defendant” or “Lumber Liquidators”). On personal knowledge of their own circumstances  
6 and upon investigation and information and belief of their counsel, Plaintiffs aver the  
7 following:

### 8 **INTRODUCTION**

9 1. Defendant develops, manufactures, advertises, sells, and distributes bamboo  
10 flooring under the brand name Morning Star Bamboo Flooring (the “Product”) throughout the  
11 United States for installation in homes and other structures.

12 2. Defendant markets and warrants that the Product is durable and meets industry  
13 standards, and markets and warrants that the Product has a thirty (30) year warranty.  
14 Defendant provided a reasonable expectation to consumers and the industry that the Product  
15 would have a usable lifetime of at least thirty (30) years.

16 3. Contrary to Defendant’s advertising and representations, the Product is subject  
17 to premature cracking, splitting, warping, and shrinking, all well before the warranted useful  
18 life.

19 4. The Product’s various modes of failure potentially cause damage to other  
20 building components and render the Product susceptible to premature failure.

21 5. Plaintiffs bring this action to seek redress for damages caused by Defendant’s  
22 wrongful conduct.

**JURISDICTION**

6. This Court has jurisdiction over this case under 28 U.S.C. 1332(d)(2) in that: (1) this action is a class action with more than one hundred (100) Class Members; (2) Defendant Lumber Liquidators, Inc. is a Delaware corporation, based in the state of Virginia, and is thus a citizen of the state of Delaware; (3) Plaintiffs and all Class Members are United States citizens; and (4) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

**VENUE**

6. Venue in this Court is proper: (1) pursuant to 28 U.S.C. 1391(a)(1) in that Defendant does sufficient business in this District to subject it to personal jurisdiction herein; and (2) pursuant to 28 U.S.C. 1391(a)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this District.

**INTRADISTRICT VENUE**

7. Venue in this Division of the Northern District is proper because a substantial part of the events or omissions which give rise to the claim occurred in Contra Costa County.

**PARTIES**

8. Plaintiff Dana Gold ("Plaintiff Gold") is a California resident and owns a home located at 1192 Bacon Way in Lafayette, California.

9. Plaintiff Tammy Emery ("Plaintiff Emery") is a West Virginia resident and owns a home located at 219 Picket Avenue in Inwood, West Virginia.

10. Plaintiff Edwin Mendez ("Plaintiff Mendez") is an Illinois resident and owns a home located at 2154 Kemmerer Lane in Bollingbrook, Illinois.

11. Plaintiff Christopher Massaro ("Plaintiff Massaro") is a New York resident and owns a home located at 205 Helen Street in Holbrook, New York.

12. Plaintiff Laura Norris ("Plaintiff Norris") is a Minnesota resident and owns a home located at 7327 West 110th Street in Bloomington, Minnesota.

1           13.     Plaintiff Donald Fursman (“Plaintiff Fursman”) is a Pennsylvania resident and  
2 owes a home located at 626 Trimble Blvd. in Brookhaven, Pennsylvania.

3           14.     Plaintiff John Triana (“Plaintiff Triana”) is a Florida resident and owns a home  
4 located at 24 Captiva Drive in Ponte Verde Beach, Florida.

5           15.     Defendant Lumber Liquidators, Inc. is a Delaware corporation with its principal  
6 place of business in Toano, Virginia. Plaintiffs are informed and believe that Defendant  
7 conducts business within the United States, and more specifically within the state of California.  
8 Also on information and belief, Plaintiffs allege that Defendant was responsible for, or  
9 otherwise involved in, the development, manufacture, marketing, sales, warranting and  
10 distribution of the Product.

11           16.     Plaintiffs are ignorant of the true names and capacities of Defendants sued  
12 herein as Does 1 through 100, inclusive, (“Doe Defendants”) and therefore sues these Doe  
13 Defendants by fictitious names. Plaintiffs will amend this Complaint to allege the true names  
14 and capacities of these fictitiously-named Doe Defendants when they are ascertained. Each of  
15 the fictitiously-named Doe Defendants is responsible for the conduct alleged in this Complaint  
16 and Plaintiffs’ damages were actually and proximately caused by the conduct of the fictitiously  
17 named Doe Defendants.

18           17.     Plaintiffs are informed and believe, and on that basis allege, that each of these  
19 Doe Defendants was the agent, joint venture, and/or employee of Defendant and/or the Doe  
20 Defendants, and in doing the things hereinafter alleged, were acting within the course and  
21 scope of the agency, joint venture, and employment with the advance knowledge, acquiescence,  
22 or subsequent ratification of Defendant and each and every other Doe Defendant.

### 23                               **FACTUAL ALLEGATIONS**

#### 24           **B.     Plaintiff Gold’s Factual Allegations**

25           18.     Plaintiff Gold is a California resident and owns a home located at 1192 Bacon  
26 Way in Lafayette, California.

1           19. Before purchasing the Product, Plaintiff Gold visited her local Lumber  
2 Liquidators store in Concord, California. There, she spoke with the sales manager who  
3 convinced her to purchase the Product rather than traditional hardwood flooring.

4           20. In making his sales pitch, the sales manager described how the Product was  
5 made, discussed the quality of the materials used, and discussed the high quality of  
6 manufacture.

7           21. The sales manager informed Plaintiff Gold that the Product was harder and more  
8 durable than real wood, and that, if she dropped a can of cat food on the Product, it would not  
9 dent, unlike hardwood, and that the Product was virtually scratch and dent resistant.

10          22. The sales manager also informed Plaintiff Gold that the Product was at least  
11 two-and-a-half times stronger than Red Oak.

12          23. The sales manager also informed Plaintiff Gold that the Product had a lengthy  
13 warranty but she was not given the warranty or informed of its terms before her purchase.  
14 Although Plaintiff Gold does not recall the length of the warranty, she does recall it was long  
15 and implied to her that the Product would last that length of time.

16          24. In reliance on the information she had been given by Defendant, Plaintiff Gold  
17 purchased the Product and, in early October 2013, Plaintiff Gold used the services of a licensed  
18 flooring contractor to install the Product in her home. Within weeks of installation, and while  
19 her home remained unoccupied, Plaintiff Gold observed initial defects with the Product. She  
20 observed the Product was scratching easily and splintering.

21          25. She notified Defendant by phone on October 30, 2013. The customer service  
22 representative requested she complete a “General Disclosure Statement” to begin the claims  
23 process. Plaintiff Gold completed the General Disclosure Statement, and mailed it to  
24 Defendant’s claims department.

25          26. On or about December 2, 2013, Richard King of Inspect Solutions, a company  
26 retained by Defendant, inspected the Product installed at Plaintiff Gold’s home. He drafted a  
27

1 report on or about December 6, 2013, in which he concluded that Plaintiff Gold and the  
2 installers were completely at fault and no Product defects existed.

3 27. The Product continues to manifest defects to the present day, including warping,  
4 splitting, buckling, and shrinking.

5 28. On September 4, 2014, Plaintiff Gold placed Defendant on notice of these  
6 defects via a Consumers Legal Remedies Act notice (Cal. Civil Code §1782), attached as  
7 Exhibit A hereto.

8 **C. Plaintiff Emery's Factual Allegations**

9 29. Plaintiff Emery is a West Virginia resident and owns a home located at  
10 219 Picket Avenue in Inwood, West Virginia.

11 30. Before purchasing the Product, Plaintiff Emery was prompted by a local  
12 television advertisement about the cost of bamboo flooring to visit her local Martinsburg  
13 Lumber Liquidators store. At the store, she viewed samples of the Product and spoke with the  
14 manager, William S. Dyess, about the Product.

15 31. Mr. Dyess informed Plaintiff Emery that the Product was "made from the  
16 hardest wood."

17 32. Mr. Dyess provided Plaintiff Emery with a demonstration of the hardness of the  
18 Product by hitting a sample of the Product with another piece of wood to demonstrate its  
19 durability.

20 33. Plaintiff Emery also reviewed a brochure about the Product and was given a six-  
21 inch sample to take home with her.

22 34. Plaintiff Emery was also told the Product had a 30 year warranty but did not  
23 review the warranty terms before purchase. She understood that the 30-year warranty implied  
24 that the Product would last for that period of time.

1           35.     On July 10, 2014, in reliance on the demonstration, samples, and information  
2 she had been provided by Defendant, Plaintiff Emery purchased 517 square feet of the Product  
3 from Lumber Liquidators.

4           36.     On August 4, 2014, the Product was installed in her living and dining rooms and  
5 two hallways.

6           37.     The installation was conducted by Falling Water Floor, who was referred to  
7 Plaintiff Emery by Defendant.

8           38.     The cost of the installation was \$4,794.59.

9           39.     Within only a few weeks after installation, Plaintiff Emery noticed that the  
10 Product was delaminating, warping, splitting, shrinking, and scratching, and generally  
11 deteriorating in various places.

12          40.     On four occasions, Falling Water Floor Installation had to make repairs to  
13 Plaintiff Emery's floor.

14          41.     On December 15, 2014, Plaintiff Emery contacted Defendant to put them on  
15 notice that her floor was failing and that Falling Water Floor's repair efforts were futile.  
16 Instead of immediately taking reasonable steps to replace Plaintiff Emery's flooring, in a letter  
17 presumably incorrectly dated "January 5, 2015," Defendant's Customer Care Team stated that  
18 they "assigned her claim to James L."

19          42.     The Product continues to manifest defects to the present day.

20          43.     Plaintiff Emery put Defendant on notice of her claim under the West Virginia  
21 Consumer Credit and Protection Act, W. Va. Code §§ 46A-6 *et seq.*, in a letter dated February  
22 10, 2015, attached as Exhibit B, hereto.

23       **D.     Plaintiff Mendez's Factual Allegations**

24          44.     Plaintiff Mendez is an Illinois resident and owns a home located at  
25 2154 Kemmerer Lane in Bolingbrook, Illinois.

1           45. Before purchasing the Product, Plaintiff Mendez visited Defendant's website  
2 and his local Lumber Liquidators store in Bollingbrook, Illinois (Store 1086).

3           46. Plaintiff Mendez recalls that Defendant's website advertised the Product as  
4 "much harder than most hardwoods."

5           47. At his local store, Plaintiff Mendez spoke with various employees who stated  
6 that the Product was "much stronger than oak and most hardwoods" and that the Product  
7 "wouldn't crack, wouldn't bend," and that it was the "strongest, best quality product."

8           48. Also at his local store, Plaintiff Mendez observed a store display and  
9 demonstration in which store personnel attempted to put a nail through a board of the Product  
10 to demonstrate its durability. Between August 9 and September 18, 2014, in reliance on the  
11 store display, the demonstration, and the information he had been given by Defendant, Plaintiff  
12 Mendez purchased approximately 1,434 square feet of the Product from his local Lumber  
13 Liquidators store located in Bollingbrook, Illinois (Store 1086).

14           49. Plaintiff Mendez noticed that the invoices he was given referred to a warranty  
15 but did not receive a copy of the warranty.

16           50. Installation was conducted by GS Home Remodels and was completed around  
17 mid-October 2014. Plaintiff Mendez spent approximately \$9,117—\$3,022.50 for labor,  
18 \$5,634.34 for materials and other installation supplies from Defendant, and approximately \$460  
19 for replacement of trim that had to be removed in order to install the Product.

20           51. In addition to becoming sick from the smells associated with his new flooring, in  
21 or around September 2014, while installation of the Product was ongoing, Plaintiff Mendez  
22 noticed that the glue sold to him by Defendant provided little if any adhesion between the  
23 flooring and subfloor.

24           52. Plaintiff Mendez notified Defendant of this issue and, and at the request of the  
25 Defendant's "Customer Care Team," submitted a General Disclosure Statement. In response,  
26 as communicated by Customer Relations Specialist "Maggie T.," Defendant denied all  
27

1 responsibility for this issue, attributing the problems to insufficient adhesive coverage. After  
2 Plaintiff Mendez continued to complain about the glue issue, Defendant offered Plaintiff  
3 Mendez \$500 to resolve the specific issue. Plaintiff Mendez signed a release solely related to  
4 the glue issue on October 8, 2014.

5 53. Soon after he resolved the glue issue, Plaintiff Mendez began to notice that the  
6 flooring was buckling and shrinking in several areas.

7 54. The Product continues to manifest defects to the present day.

8 **E. Plaintiff Massaro's Factual Allegations**

9 55. Plaintiff Massaro is a New York resident and owns a home located at 205 Helen  
10 Street in Holbrook, New York.

11 56. Before purchasing the Product, Plaintiff Massaro visited at least three home  
12 improvement/flooring stores, in addition to Lumber Liquidators, to comparison shop (Lowe's,  
13 Home Depot, and Long Island Flooring).

14 57. Plaintiff Massaro visited his local Lumber Liquidators store on at least three  
15 separate occasions during which he viewed samples and spoke with various salespeople about  
16 the Product.

17 58. Plaintiff Massaro wanted to purchase flooring that was strong, hard, and scratch  
18 resistant because his wife was expecting a child.

19 59. He was told by the various salespeople that the Product was "very strong,"  
20 "harder and stronger than hardwood," and that it "does not scratch easily."

21 60. Plaintiff Massaro also learned that the Product had a 30 year warranty but did  
22 not see the terms until he made a claim. The length of the warranty implied that the Product  
23 would last for that time period.

24 61. On October 17, 2013, in reliance on the samples he viewed and information he  
25 was given by Defendant, Plaintiff Massaro purchased 796 square feet of the Product from  
26  
27

1 Lumber Liquidators. The product was installed in his living room, kitchen, den and hallway by  
2 Mt. Sinai Cabinet Co. The cost of the installation was \$4,689.

3 62. Upon installation, Plaintiff Massaro noticed that the Product was cracking,  
4 delaminating, gapping, and scratching in various places.

5 63. As a result, on March 2, 2014, Plaintiff Massaro notified Defendant of the  
6 problems he was experiencing with the Product and completed a General Disclosure Statement.  
7 The Statement was submitted to “Maggie T.” In addition, he filed a formal complaint with the  
8 Better Business Bureau.

9 64. On March 13, 2014, Defendant (“Maggie T.”) sent Plaintiff Massaro a letter  
10 stating that according to the company’s “investigation,” which apparently was conducted only  
11 on the basis of Plaintiff Massaro’s completed General Disclosure Statement, the Product’s  
12 various defects were all due to installation failures and that the complaint did not amount to “a  
13 warrantable claim.”

14 65. The Product continues to manifest defects to the present day.

15 **F. Plaintiff Norris’ Factual Allegations**

16 66. Plaintiff Norris is a Minnesota resident and owns a home located at 7327 West  
17 110th Street in Bloomington, Minnesota.

18 67. Before purchasing the Product, Plaintiff Norris was prompted by a local  
19 television advertisement regarding the flooring products sold at Lumber Liquidators to contact  
20 Defendant.

21 68. Plaintiff Norris contacted Defendant by telephone to learn about the different  
22 flooring options. During the call, Plaintiff Norris inquired about hardwood, laminate, and  
23 bamboo flooring. The customer service representative advised Plaintiff Norris to purchase the  
24 Product, stating that it was the most durable option.

25 69. Soon after speaking with the Defendant’s customer service representative,  
26 Plaintiff Norris visited her local Lumber Liquidators store in Burnsville, Minnesota. There, she  
27

1 spoke with a sales associate who explained to her that the Product is much stronger than  
2 traditional hardwood flooring.

3 70. In order to demonstrate the durability of the Product, the sales associate showed  
4 Plaintiff Norris a large, approximately 6' x 8' sample of the Product, which was located next to  
5 the main entrance of the store.

6 71. As part of his sales pitch, the sales associate explained that Lumber Liquidators  
7 stands behind its products and that the Product is supported by a warranty. The sales associate,  
8 however, did not review the terms of the warranty with Plaintiff Norris or provide a copy for  
9 Plaintiff Norris to review prior to purchasing the Product.

10 72. In August 2014, and in reliance on the information she had been given by  
11 Defendant over the telephone and in the store, Plaintiff Norris purchased the Product.

12 73. Plaintiff Norris used the services of a licensed contractor to install the Product in  
13 her home in September 2014.

14 74. Within two months of installation, Plaintiff Norris observed that the Product was  
15 cupping, shrinking, warping, and splitting.

16 75. In or around November 2014, Plaintiff Norris contacted Defendant via telephone  
17 regarding the problems she was experiencing with the Product. The customer service  
18 representative requested that Plaintiff Norris complete a "General Disclosure Statement" to  
19 begin the claims process. Plaintiff Norris completed the General Disclosure Statement, and  
20 mailed it to Defendant's claims department.

21 **G. Plaintiff Fursman's Factual Allegations**

22 76. Plaintiff Fursman is Pennsylvania resident and owns a home located at  
23 626 Trimble Blvd. in Brookhaven, Pennsylvania.

24 77. Before purchasing the Product, Plaintiff Fursman visited his local Lumber  
25 Liquidators store in Claymont, Delaware on two occasions. Plaintiff Fursman's first visit was  
26 in July 2014 and his second visit was in August 2014.  
27

1           78.     During his first visit, Plaintiff Fursman spoke with a Lumber Liquidators sales  
2 representative who emphasized the high quality and durability of the Product as well as the  
3 superior performance of the Product as compared to other hardwood flooring products.

4           79.     The sales representative informed Plaintiff Fursman that the Product was  
5 “harder and more durable than real wood,” “remarkably tougher, harder, stronger than normal  
6 hardwoods,” “more water resistant than normal hardwood floors,” “superior and better quality  
7 than other hardwoods,” and “came with a thirty year warranty.”

8           80.     In touting the hardness and durability of the Product, the sales representative  
9 provided Plaintiff Fursman with a demonstration by hitting a sample of the Product with an  
10 object, which did not dent the flooring sample.

11          81.     Plaintiff Fursman also reviewed product brochures for the Product as well as  
12 other hardwood flooring products, which he took home.

13          82.     In addition, Plaintiff Fursman was given an eight to ten inch sample of the  
14 Product to take home.

15          83.     Plaintiff Fursman returned to his local Lumber Liquidators store in Claymont,  
16 Delaware for his second visit in August 2014.

17          84.     During this second visit, Plaintiff Fursman spoke with a Lumber Liquidators  
18 sales representative who again emphasized the high quality and durability of the Product as  
19 well as the superior performance of the Product as compared to other hardwood flooring  
20 products.

21          85.     The sales representative reiterated the same sales pitch as the first sales  
22 representative and informed Plaintiff Fursman that the Product was harder and more durable  
23 than real wood, remarkably tougher, harder, stronger than normal hardwoods, more water  
24 resistant than normal hardwood floors, was superior and better quality than other hardwoods,  
25 and came with a thirty year warranty.

1           86. Plaintiff Fursman was given an additional eight to ten inch sample of the  
2 Product to take home.

3           87. After completing his second visits to a Lumber Liquidators store, Plaintiff  
4 Fursman reviewed the product brochures he took home as well as the information on  
5 Defendant's website regarding the Product. The information reviewed and relied upon by  
6 Plaintiff Fursman included, but was not limited to, the following statements:

7           a. "They're finely crafted to ensure they're free of defects."

8           b. "Each Morning Star floor is manufactured to be exceptionally durable so  
9 it withstands the rigors of everyday life."

10           c. "Morning Star Bamboo is two to two-and-a-half times harder than red  
11 oak, so it holds up well to "pretty much anything you can put it through."

12           d. "To make strand bamboo, shredded bamboo fibers are compressed under  
13 extreme heat and pressure. This manufacturing process yields flooring that is even harder and  
14 denser than traditional bamboo floors."

15           e. "Morning Star Bamboo Flooring is one of the best bamboo floors on the  
16 market today. It is produced from old growth bamboo reeds that are at least 4 years old,  
17 thereby increasing hardness. Morning Star Bamboo Flooring creates a naturally beautiful and  
18 ecologically friendly product that evokes a feeling of luxury."

19           88. After his visits to his local Lumber Liquidators stores, Plaintiff Fursman also  
20 reviewed the Product's limited warranty and installation instructions.

21           89. Plaintiff Fursman also reviewed and relied on Defendant's representations that  
22 its Product meets accepted industry standards, including ASTM International.

23           90. Based on the samples, demonstration, and information provided by Defendant in  
24 its brochures, on its website, and by its sales representatives, including the Product's limited  
25 warranty, installation instructions, and marketing and advertising materials, Plaintiff Fursman,  
26  
27

1 purchased 597.30 square feet of the Product from Defendant on or around September 30, 2014.  
2 He paid \$2,802.54 for the Product.

3 91. Prior to installation, and in accordance with the installation instructions, the  
4 Product was acclimated in the room in which the Product was to be installed from date of  
5 purchase, September 30, 2014, until the last week of October 2014.

6 92. After the product was properly acclimated in accordance with the installation  
7 instructions, Plaintiff Fursman installed the Product in his home's living room, dining room,  
8 and kitchen during the period of October 23-29, 2104.

9 93. After installation, Plaintiff Fursman observed that the Product was excessively  
10 shrinking throughout his home. The shrinkage was so severe that it created large gaps between  
11 the Product slats and the baseboards. In some areas, the shrinkage produced three-inch gaps  
12 between the Product and the baseboards.

13 94. On or around March 12, 2014, as a result of the excessive shrinkage of the  
14 Product, Plaintiff Fursman contacted his local Lumber Liquidators store, where he purchased  
15 the Product, regarding the defective nature of the Product. He was instructed by his local  
16 Lumber Liquidators store to call (800) HARDWOOD and report his claim.

17 95. On or around March 12, 2014, Plaintiff Fursman called (800) HARDWOOD  
18 and spoke to a Lumber Liquidators claims representative about the premature failure of the  
19 Product.

20 96. On April 13, 2015, Plaintiff Fursman received a letter from Defendant's  
21 Customer Care Team indicating that his claim had been assigned to a customer care  
22 representative.

23 97. Shortly thereafter, Plaintiff Fursman properly and completely filled out  
24 Defendant's warranty claim form and submitted it to Defendant along with all of the requested  
25 information and photographs of the Product.  
26  
27

1           98.     On May 11, 2015, Plaintiff Fursman received a letter from Defendant denying  
2 his warranty claim and indicating that the gapping issue he was experiencing was the result of  
3 either inadequate installation or environmental factors in his home. The letter further stated  
4 that because the gapping is typically not a manufacturing issue, Defendant does not order an  
5 inspection of the flooring.

6     **H.     Plaintiff Triana's Factual Allegations**

7           99.     Plaintiff Triana is a Florida resident and owns a home located at 24 Captiva  
8 Drive in Ponte Vedra Beach, Florida.

9           100.    Before purchasing the Product, Plaintiff Triana considered several retailers, who  
10 sent representatives to his home to take measurements and discuss various flooring options.

11          101.    With a dog living in the home and his grandchildren visiting frequently,  
12 Plaintiff Triana's most important criteria for the new floor included stability and  
13 hardness/durability.

14          102.    In researching various flooring materials and brands online, Plaintiff Triana  
15 looked into the Product on Defendant's website, where he recalls reading claims touting the  
16 Product's hardness relative to other flooring materials and other bamboo flooring products.

17          103.    In addition, Defendant's representatives with whom Plaintiff Triana spoke at his  
18 home and later at the Jacksonville, Florida store recommended the Product as the best option  
19 for his needs.

20          104.    These individuals represented that the Product was very stable and very hard—  
21 two-and-a-half times harder than hardwood flooring.

22          105.    Furthermore, they represented that the Product was "carbonized" and heat-  
23 treated, under extreme pressure, to remove natural oils in the material making it much harder  
24 than traditional bamboo flooring.

25          106.    A salesperson in the Jacksonville store provided a demonstration in support of  
26 these representations, hitting the Product with a hammer to show it would not dent.  
27

1           107. Plaintiff Triana also recalls representations by Defendant that the Product was  
2 protected by a 30 year warranty, though he did not receive a copy of the warranty, nor was he  
3 made aware of its specific terms, before his purchase of the Product. However the length of the  
4 warranty implied that the Product would last.

5           108. In reliance on Defendant's representations, Plaintiff Triana purchased  
6 approximately 820 square feet of the Product from the Jacksonville Lumber Liquidators store  
7 in April and May 2012, at a total cost of \$4,726.38.

8           109. Defendant provided Plaintiff Triana a list of three approved contractors who  
9 could install the flooring, and, based on the specific recommendation of the salesperson who  
10 sold him the flooring, Plaintiff Triana selected Coastline Customs Floors, who installed the  
11 flooring in his home at a total (labor) cost of \$3,075.41.

12           110. Not long after the Product was installed, Plaintiff Triana began noticing that the  
13 Product was cracking, splitting, peeling, and cupping, making the floor increasingly  
14 unattractive and unsafe.

15           111. In or around January 2014, Plaintiff Triana notified Defendant of these  
16 problems. The in-store representative with whom he spoke provided no assistance. He also  
17 called Defendant's main customer service group, which responded by assigning his claim to  
18 "Natasha D." and asking him to complete a "General Disclosure Statement." Plaintiff Triana  
19 filled out and returned this form on or around March 3, 2014.

20           112. Rather than assessing Plaintiff Triana's claim based on that information or its  
21 further investigation, Defendant responded that Plaintiff Triana would need to hire an inspector  
22 to come to his home, assess the problems, and provide the results to Defendant (all at Plaintiff  
23 Triana's own expense).

24           113. The Product continues to manifest the aforementioned defects to the present  
25 day.  
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**I. Product Manufacturing Process and Representations**

114. The Product is made by slicing bamboo into strips, cutting the strips into desired widths, immersing the strips in an acid solution to eliminate sugars and starch, (in some cases) staining the material, binding it together into planks using an adhesive, and finally applying a curing lacquer. Plaintiffs are informed and believe that Defendant has been manufacturing and selling the Product since approximately 2008. Defendant has sold the Product to thousands of consumers throughout the United States, including California. The Product was and is marketed and sold for use in homes and other structures.

115. Defendant concealed from and/or failed to disclose to Plaintiffs and Class Members the defective nature of the Product.

a. Plaintiffs are informed and believe that Defendant used a variety of methods to communicate representations about the durability and quality of the Product and about its warranty to the general public and contractors in the flooring installation business. These representations were published on Internet sites such as YouTube, on Defendant's website, at trade, building, and home shows typically open to the general public and contractors who service ultimate consumers of the Product, and at Defendant's product retail stores.

Defendant communicated a common and repeated theme regarding the Product:

- (i) "Morning Star Bamboo is two to two-and-a-half times harder than red oak, so it holds up well to "pretty much anything you can put it through."
- (ii) "To make strand bamboo, shredded bamboo fibers are compressed under extreme heat and pressure. This manufacturing process yields flooring that is even harder and more dense than traditional bamboo floors."
- (iii) "Morning Star Bamboo Flooring ... is produced from old growth bamboo reeds that are at least 4 years old, thereby increasing hardness. Morning Star Bamboo Flooring creates a naturally

1 beautiful and ecologically friendly product that evokes a feeling  
2 of luxury.”

3 116. Defendant states that its flooring meets accepted industry standards, stating on  
4 its website: “QUALITY GUARANTEE: This Flooring is constructed and tested to meet or  
5 exceed industry standards for emissions” -- including ASTM 4066 (wear resistance), ASTM  
6 3359 (Finish Adhesion) and ASTM 4442 (Moisture Content). *See*  
7 [http://www.lumberliquidators.com/assets/images/product\\_page/Morning\\_Star\\_10023638\\_HS\\_](http://www.lumberliquidators.com/assets/images/product_page/Morning_Star_10023638_HS_Str_Antique.pdf)  
8 [Str\\_Antique.pdf](http://www.lumberliquidators.com/assets/images/product_page/Morning_Star_10023638_HS_Str_Antique.pdf) (citing various “Technical Specifications”).

9 117. The hardness of the Product is a misleading indicator of whether it can  
10 withstand scratching and denting better than other hardwood flooring products.

11 118. Defendant knew that it did not manufacture the Product in such a way as to  
12 withstand scratching and denting better than other hardwood flooring products, such as red oak.

13 119. By focusing on the hardness of the Product rather than the other factors that  
14 cause the defects experienced by Plaintiffs and Class Members, Defendant intended to mislead  
15 consumers into believing its representations that the Product “does not scratch easily” and is  
16 “virtually scratch and dent resistant.” These statements were and are false and misleading  
17 because Defendant deliberately failed to disclose that factors other than hardness will result in  
18 the Product being easily scratched and dented.

19 120. Defendants also failed to disclose that its manufacturing process did not create a  
20 product that could prevent scratches and dents better than other hardwood flooring products.

21 121. Defendant represents that the Product meets ASTM 4442, the standard for  
22 moisture content. But ASTM 4442 actually prescribes the process for drying wood and wood  
23 particle material but does not prescribe the acceptable moisture content of the final, dried  
24 product.

25 122. Indeed, bamboo, like wood flooring products, is hydroscopic, meaning it gains  
26 and loses moisture as the air around it gains and loses moisture.  
27

123. The typical moisture content in wood flooring products is 6% to 9%. *See* <http://www.hardwoodfloorsmag.com/installation/understand-wood-floor-moisture-content-dimensional-change.html> (last visited December 16, 2015); <http://www.greenbuildingsupply.com/Not-All-Bamboo-is-Created-Equal> (last visited December 16, 2015).

124. By claiming that the Product meets moisture content standard ASTM 4442, Defendant is deliberately misleading consumers to believe that ASTM 4442 means that the Product's moisture content is within an acceptable range.

125. Defendant's installation instructions provide that the Product may contain up to 12% moisture at installation – 3% more than the expected standard. *See* [http://www.lumberliquidators.com/assets/images/installation/morning\\_star\\_clc.pdf](http://www.lumberliquidators.com/assets/images/installation/morning_star_clc.pdf) (last visited December 16, 2015).

126. Defendant fails to disclose to consumers that the Product may contain an elevated moisture content such that even after acclimatization it will fail of its essential purpose and crack, cup, warp, gap, shrink, and otherwise degrade in a defective manner.

127. Defendant continues to advertise and sell the Product for use in homes and other structures, omitting to disclose to Plaintiffs and Class Members, their agents, or contractors material facts concerning the Product, including, but not limited to, concealing that the Product was defectively formulated, was and is susceptible to warping, splitting, shrinking, and splintering, does not otherwise perform as represented, and fails far in advance of its purported thirty year warranted life. All of these facts are material to a reasonable consumer. The Product did not perform in accordance with the reasonable expectations of Plaintiffs and Class Members in that it was not durable and suitable for use as a flooring system in their homes and other structures.

128. The Product is a manufactured wood product that is defectively designed, tested, and manufactured, and will warp, buckle, splinter, and unreasonably scratch and dent when

1 used in its intended manner. These failures are common in the Product regardless of when,  
2 where, or how it is installed.

3 129. As a result of Defendant's misconduct, Plaintiffs and Class Member have  
4 suffered actual damages in that the flooring in their homes and other structures has prematurely  
5 failed and will continue to do so, potentially damaging other building elements, causing  
6 continuous and progressive damage to property, and requiring Plaintiffs and Class Members to  
7 expend thousands of dollars to repair or replace the flooring long before the expiration of the  
8 "useful life" of the Product as represented by Defendant.

9 130. Due to the defective nature of the Product, it is not sufficiently durable to serve  
10 as flooring. The following photographs depict some of the problems Plaintiffs and others have  
11 experienced with the Product.





131. Because of the relatively small size of the typical damages, and the modest resources of most homeowners and of the individual Class Members, it is unlikely that most Class Members could afford to seek recovery against Defendant on their own. A class action is therefore the only viable, economical, and rational means for Class Members to recover from Defendant for the damages they have caused.

**J. Defendant's Knowledge of and Notice that its Flooring was Defective**

132. Defendant is well aware of the problems related to the cracking, splitting, warping, cupping, scratching, and denting of the Product. It has received warranty claims and complaints from customers (like those submitted by the Named Plaintiffs). In addition, websites such as [www.mythreecents.com](http://www.mythreecents.com) and [www.consumeraffairs.com](http://www.consumeraffairs.com) contain complaints about the Product dating back to 2011 and 2012 – which further continue to put the Defendant on notice concerning the defective nature of the Product.

133. Upon information and belief, Defendant pays to be a member of [www.consumeraffairs.com](http://www.consumeraffairs.com), which means that it is notified of each complaint and has the option of responding to each complaint. A review of this website demonstrates that Defendant does review and respond to customer posts on [www.consumeraffairs.com](http://www.consumeraffairs.com).

134. The following is an example of a complaint about the Product from October 2, 2013 on [www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=12](http://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=12) (last visited December 16, 2015):

Judy of Ione, CA

Oct. 2, 2013 Verified Reviewer

We purchased dark stranded bamboo flooring from Lumber Liquidators. We were very particular to request a very durable

1 floor that would not scratch easily and had the best resistance for  
 2 moisture spills etc. This flooring was highly recommended by  
 3 their salesman as one of the most durable. We installed this  
 4 flooring throughout our entire downstairs living room, dining  
 5 room, and kitchen. This flooring now has scratches everywhere!!  
 6 Scratches from everything and anything that is slid across the  
 7 floor such as: unoccupied bar stools that have protective plastic  
 8 caps, TV trays that were only slid forward enough to allow us to  
 9 eat while sitting on the couch, and even an empty 5 gallon bucket  
 10 when slid a couple of inches. There are many, many scratches all  
 11 over the house and we have no idea how they got there.

12 All of these scratches show up as bright white lines on the dark  
 13 flooring which obviously was not treated well enough to make  
 14 the surface as durable as we were told. We have no pets, no  
 15 children at home, no high heels, and all of the heavy furniture  
 16 have the felt pads to protect from scratching the floor. The  
 17 flooring was only installed in April/May of this year. We have a  
 18 thirty year warranty on the flooring and have called the Lumber  
 19 Liquidators customer services department to complain about the  
 20 flooring and see what they will do to honor the product warranty.

21 We are waiting for Lumber Liquidators to get back to us. How  
 22 disappointing to spend so much money on a product  
 23 recommended by Lumber Liquidators sales and yet it absolutely  
 24 does not meet the standards we requested. DO NOT BUY FROM  
 25 LUMBER LIQUIDATORS!!!! They sell less than quality  
 26 materials!!!!

27 135. The following complaints are also from [www.consumeraffairs.com](http://www.consumeraffairs.com) and relate to  
 complaints made to Defendant between 2011 and 2013:

I purchased \$6000 of morningstar bamboo from Lumber  
 Liquidators in Jan 2012 and \$3000 more in adjacent room on  
 same floor in April 2012. Approximately 6 months after  
 installation the \$6000 floor began to show gaps and shrinkage.  
 The 2nd installation has been trouble free. I contacted the LL  
 store and they said not our problem. Contacted LL customer  
 service and they told me it was my fault due to humidity levels in  
 my home. If that were the case the \$3000 floor would also show  
 gaps and shrinkage since they are next to each other! Their  
 salesman never mentioned any problem with this wood and  
 humidity. Salesman said the wood was "tougher than oak". What

1 a lie! It scratches plenty! They offered \$200 on a \$1000 repair  
2 contingent on me waving any future claims. What a joke!<sup>1</sup>

3 Can someone please tell me if there is a group from here in Texas  
4 that is getting together to bring a class action against LL? We  
5 purchased 1200 sq. ft. of Morning Star Bamboo Flooring in  
6 November and it is cupping EVERYWHERE. We came home  
7 from being gone over the weekend and now it is actually  
8 buckling up. From EVERYTHING I have read, it is defective  
9 product we were sold and do NOT expect to get any help from  
10 LL. As of now, they have been completely useless in taking care  
11 of my problem floor. I WILL continue to go through the motions  
12 to hopefully get my money for the flooring refunded and the cost  
13 to have it pulled up reimbursed!!! I do NOT want this junk in my  
14 home. If anyone has information, please forward it to me. When  
15 you hire a lawyer for something like this, does LL have to pay the  
16 attorney or do you have to? I do NOT have the money to hire and  
17 pay an attorney.<sup>2</sup>

18 Lost first level contents and flooring from Sandy. January 2013,  
19 made purchase of 800 sq ft of Morning Star Bamboo, \$3661.78.  
20 Had their installers, Palermo to home to inspect and recommend  
21 how and when to install (another \$1100). Had delivery, allowed  
22 floor to acclimate for specified 3-5 days. Their installers returned  
23 to install. By end of March, had some gaps. Called Lumber  
24 Liquidators, they called installers. Was assured that with full year  
25 of warranty for installation and product, allow it to go thru  
26 summer months. July noticed scratches. While scratches are  
27 normal, these were white, not the bamboo color. Made claim to  
LL, was told to mail balance of floor for inspection. They  
received, said floor not at fault, never returned floor. Dec 2013,  
gaps grew to over 1/2 inch, separation from walls. Called Lumber  
Liquidators. Made claim on Dec. 2, repeated claim on Dec 13,  
2013. January 17th, began follow up and no one called us.  
Googled issue online. Found we were one of many. Inspections  
began from LL and their installers, Palermo. They agreed  
separation not normal - many homes in area with issue. Went to  
two of the LL stores. They agreed with issue and fault of floor  
and had numerous issues with customers and made changes to  
how they sell and allow acclimation of product. Three inspections

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24 <sup>1</sup> [https://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=9](https://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=9) (last visited December 16,  
25 2015).

26 <sup>2</sup> [https://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=10](https://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=10) (last visited December 16,  
27 2015).

1 were done, no issue at home cited. March inspection found  
 2 moisture level now low in home. They are now blaming us. No  
 3 one has record of 3 other inspections. Our gaps are all thru home  
 4 from the front door on. As large as 1 inch in some spots.  
 5 Unsightly and embarrassing. We had none of these issues with  
 6 our floor before Sandy in its 5 year life. It is not our home, it is  
 7 the product. Lumber Liquidators knows it. Every salesperson you  
 ask in their store in my NY area cautions the purchaser not to buy  
 this product. I don't know if the product was too wet when  
 manufactured, or too dry or from endangered Tiger habitat as  
 stated online, but we are so frustrated and embarrassed by our  
 home's floor every day.”<sup>3</sup>

8 I bought 1000 square feet of Morning Star Bamboo from Lumber  
 9 Liquidators in November 2011 after consulting with the sales  
 10 associates in the Perrysburg, OH store. We received the product,  
 11 allowed it to acclimate indoors for several weeks and then had it  
 12 installed by the installer recommended by the company. About  
 13 one month later, the floor began to gap, snap, crackle and pop all  
 14 over the place. Our installer could not be reached for some time. I  
 15 called the store that referred me to corporate. The proper  
 warranty protocol was followed and several weeks later, nothing!  
 The customer service rep is mysteriously gone and no one will  
 help. Unreturned phone calls and emails continue. I need to list  
 my home to sell in the next month, meanwhile my floor is  
 disintegrating.<sup>4</sup>

16 136. In fact, on information and belief, Defendant started excluding any negative  
 17 reviews from its own website starting in at least 2010.

18 137. Other websites include similar customer complaints. For instance, on  
 19 <http://www.trulia.com>, there is a string of complaints concerning almost immediate failure of  
 20 the Product and related ignored warranty claims:

21 **crabbyburton, Home Buyer, Basking Ridge, NJ**

22 I am having the same problem! House is bone dry- yet after 6  
 23 months our floor looks awful, the edges are cupping and the

24  
 25 <sup>3</sup> [https://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=10](https://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=10) (last visited December 16,  
 2015).

26 <sup>4</sup> [http://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=14](http://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=14) (last visited December 16,  
 2015).

boards are the finish is bubbling and cracking. Looks awful!! I have filed a warranty claim but haven't heard back-

Fri Nov 29, 2013<sup>5</sup>

**somis53, Home Buyer, 11727**

I had the exact same problem as you. I was told by the sales person that it would be great on a cement slab. Within 3 to 4 months Joints separated, floor cupped and in certain areas discolored, got very dark. When I called lumber liq. they said it shouldn't have been installed on a slab because of the moisture. They took no responsibility and blamed it on the installer. And now I'm concerned about the amount of formaldehyde it contains.<sup>6</sup>

Sun Mar 1, 2015

138. Indeed, Defendant's conduct shows actual notice and knowledge of the Product's defects as it responded directly to complaints and attempted to attribute reported problems on installation issues. For instance, in 2012, Defendant responded to a complaint posted on <http://lumber-liquidators.pissedconsumer.com/buyer-beware-defective-product-lumber-liquidators-20120328308399.html> (last visited December 16, 2015):

**Dir. Customer Care \_ LL Mar 31, 2012**

Sales associates answer questions and offer guidance as needed. A final choice is made by a consumer when they agree and purchase material, so staff never makes anyone buy any particular item, but advises them based on exchanges of information during the sales process. The FINAL DECISION for any flooring installation no matter where you shop comes from the installers onsite assessment of the project. Your installer (Joseph) is ultimately responsible for a projects needs and we noted on 3.20.12 that he never read the instructions, so the qualified installer was not properly educated to install this material as evident in your complaint. This is publicly verifiable on our website (Customer Care page) where the installation instructions can be viewed to support the above mentioned statement. Michelle from Customer Relations is well educated and capable. The dimpling is not an ongoing problem, rather the

<sup>5</sup> [http://www.trulia.com/voices/Remodel\\_and\\_Renovate/Has\\_anyone\\_tried\\_the\\_bamboo\\_floors\\_from\\_lumber\\_liq-51225](http://www.trulia.com/voices/Remodel_and_Renovate/Has_anyone_tried_the_bamboo_floors_from_lumber_liq-51225) (last visited December 16, 2015).

<sup>6</sup>*Id.*

1 result of improper installation as noted the installer did not read  
 2 this information until the problem surfaced. The instructions state  
 3 (one of several examples) "Owner and installer are solely and  
 4 jointly responsible for site conditions, pre-installation moisture  
 5 checking of new floor and subfloor and must ensure that all  
 6 conditions and specifications listed in this guide have been  
 7 thoroughly met prior to Installation of hardwood floor." The  
 8 installers likely upset for failing to read the document because he  
 9 failed to follow direction, so this is an installation concern and we  
 10 do not fix installer mistakes as we're not responsible for  
 11 independent installer errors" Not [*sic*] supplier ever is. A good  
 12 reputation is earned when directions are reviewed and adhered to,  
 13 so we disagree with your assessment of his credentials in this  
 14 case. Unfortunately, this is not a product defect but installer error  
 15 meaning it's not covered under the warranty. The other product  
 16 installed was obviously conducted following direction as an  
 17 example of what a floor can look like when instructions are  
 18 followed. Sorry to hear this happened. We sell thousands of  
 19 bamboo floors each week without issue and the return business  
 20 alone accounts for most of these sales. People are satisfied when  
 21 the instructions are followed and this is a terrible way to learn the  
 22 importance of those documents. Yes " Everyone be aware to  
 23 review the warranty and the install instructions to avoid this from  
 24 happening on your project. We're taking additional steps April to  
 25 provide even more information about what a consumer can do to  
 26 further help avoid these situations from happening. Always check  
 27 installer references and oversee the project so the job meets your  
 satisfaction within the first 25% installed at a minimum.

139. On information and belief, to date, Defendant continues to review customer  
 complaints online and, instead of offering reasonable remedies for customers, responds by  
 blaming defects with the Product on care and/or installation:

**LLResponse, Just Looking, Toano, VA**

LL Response: Reviewing the dated and current postings we find a  
 need for consumer education to understand how flooring is to be  
 cared for before, during, and after installation. Installing flooring  
 without reviewing the installation instructions or failing to review  
 the credentials of their hired installers is never recommended and  
 leads to problems. If you rely solely on the installer to make all  
 the project decisions on your behalf is a common mistake and  
 complaining about board selection, quality of work and care  
 given to the floor during the process can all be avoided by being  
 present and overseeing the work performed. We make every

1 effort to educate consumers and the one thing about the flooring  
2 business is all flooring products require the same type of  
3 acclimation, pre-installation testing, installation technique, proper  
4 application of the floor to include moisture protection, and finally  
5 proper ongoing maintenance of the floor to include temperature  
6 and humidity controls. A common theme with gapping concerns  
7 stems from customers refusing to install transitions for floating  
8 floor systems, or improper application of transitions such as T-  
9 moldings allowing the floor to expand and contract as designed.  
10 Application of the floor is just as important as choosing the color  
11 or style of flooring for your home. We can ask questions at the  
12 point of sale, but ultimately the installer has the final say on  
13 whether the floor type is the right one for the scope of your  
14 project. Hire a professional with the installation backed by a  
15 warranty, but know that a product warranty covers the finish  
16 wearing down to the wood layer, or core as it may be. Scratches,  
17 dents, chipping, cupping, buckling and other issues are not a  
18 covered event and point to other installation and care issues. This  
19 does not change when you shop somewhere else and the best  
20 advice is to read the warranty, follow the instructions, hire a  
21 flooring contractor not a general contractor to install your floor,  
22 and follow the care instructions. Thousands of people shop  
23 everyday with us and have a wonderful experience. Choosing the  
24 right floor and caring for it after installation leads to complete  
25 satisfaction with a warranty that covers finish wear through the  
26 period offered. Flooring requires care like any other investment,  
27 so please visit our site for more information or assistance if you  
have questions. It can be rather frustrating to get flooring advice  
from others who may not have taken the proper steps to install  
the floor, or care for it according to the instructions. If you need  
assistance please locate the Customer Care tab on the upper right  
hand corner of our main web page, or call 1800HARDWOOD.

Wed May 7, 2014

**LLResponse, Just Looking, Toano, VA**

The warranty does not cover scratches or dents - no flooring  
warranty does - this is a care issue and not something a  
manufacturer or seller pays for. I have a scratch on my car and  
don't expect Ford to pay for the repair. This is a matter of  
understanding what you are responsible for versus the seller.

Wed May 7, 2014

140. Similarly, the Better Business Bureau (“BBB”) website reports that, since 2013, 819 complaints against Defendant have been resolved, and 605 complaints against Defendant remain unresolved, some of which relate to the defective nature of the Product.

141. Like [www.consumeraffairs.com](http://www.consumeraffairs.com), the BBB notifies Defendant of each complaint and Defendant has the option of responding to the consumer making the complaint.

142. On information and belief, Defendant’s CEO was put on notice that the company is knowingly selling a product containing defects and his response was to issue a refund without demanding the customer go through the warranty process:

Morning Star bamboo flooring from LL seems to be a major issue. I installed 1800sqft using a licensed flooring contractor after labor day 2014. I left the product on studs inside the house in an empty room for over a month as directed by salesman at LL; with a fan blowing from the floor and ceiling fan above. I cut off the ends of the boxes also as directed. Within a week; the floor started to cup in the dining room in front of the china cabinet and is now cupping at various places throughout the house. LL customer service replied to my letter of complaint with the same reply; cupping is caused from moisture above and below the wood. We installed with MS adhesive directly to prepared concrete pad of house we just purchased. Seems to me LL is knowingly selling product that has systemic issues. I wrote to the CEO about being charged "restocking" fee on \$10,000 purchase. I was not happy to be charged because I ended up with 14 extras cartons with only 1 carton that was waste. Installer wasted very little product. CEO issued a refund to us after he received a letter. In my opinion and 35 years in retail management; this is product liability. I am writing to the CEO now to voice my disgust. I also believe LL is knowingly selling "wet" NOT KILN DRIED product. 2 flooring contractors independently walked my home and stated installation was done correctly in there *[sic.]* opinion. I believe legal action will be necessary. I don't think the CEO will venture from their customer support teams reply.<sup>7</sup>

<sup>7</sup> <http://www.4inspirationsphotographyblog.com/suzanne-mcgrath-photograp/2013/04/a-product-review-morningstar-bamboo-click-floors.html> (last visited January 16, 2015).

**K. Defendant's Warranty Practices and Procedures Also Put Them on Notice of the Products' Defects**

143. When consumers complaint to their local Lumber Liquidators store about the Product's defects, they are directed to contact the corporate customer care department for assistance.

144. Defendant's corporate customer care department has each customer fill out a "General Disclosure Statement," which includes a description of the Product, its mill code and production date, how long it was acclimatized, whether it was installed professionally, and a description of the defects that have appeared.

145. Defendant then determines whether to order an inspection of the flooring or not.

146. Inevitably, Defendant determines that the defects complained of are the result of poor installation and denies the claim. *See, e.g.*, ¶¶ 155, 156, 158-60, *supra*.

147. Indeed, after this Complaint was publicized 64 comments were received, including the following two about Product purchased in 2013 that describe Defendant's practice of always blaming the consumer:

Purchased 1400 S.F. of Morningstar carbonized strand bamboo in July 2013 and had it professionally installed by their installer. Same problems as everyone else speaks of. Worst problems are shrinking and gaps. Still continues to shrink a year and a half later. Went through entire claim process with Lumber Liquidators. Arbitrarily turned down at every step. Paid for two different professional flooring inspectors, and on their advice paid for professional re-installs of large sections twice. Shrinking and gaps continue to happen. I have detailed and contemporaneous notes on all events and conversations, and would like to be part of the class action suit.<sup>8</sup>

I have had the same issue with my LL Morning Star Bamboo flooring (we had over 2000 sqft installed). The floors began to warp and buckle within 3 months after installation in October 2013. I went through the entire claim process with LL and received a letter from them informing me that the issue with my

<sup>8</sup> <http://topclassactions.com/lawsuit-settlements/lawsuit-news/45644-lumber-liquidators-facing-bamboo-flooring-class-action/> (last visited December 16, 2015).

flooring has nothing to do with the product itself and everything to do with a moisture issue (despite purchasing the most expensive moisture barrier/adhesive they sell). The will take NO responsibility for anything. I have fought with the installer and my contractor, and am now purchasing new flooring and working out the rest with my contractor. I am now concerned about the formaldehyde. I have a neurological condition and cannot have this s\*&t in my home!!! Please send me some information as to what I can do, and whether ALL of the flooring needs to come out.<sup>9</sup>

### **CLASS ACTION ALLEGATIONS**

148. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(2) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and the class. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements as set forth in Rule 23(a) and Rule 23(b)(3).

149. Plaintiffs advance this action on behalf of the following classes and subclasses (together, the “Class” or “Class Members”):

Nationwide Class: All individuals in the United States who purchased Morning Star Bamboo Flooring, manufactured and sold by Lumber Liquidators, Inc. Excluded from the Class are Defendants, their legal representatives, assigns and successors and any entity in which Defendants have a controlling interest. Also excluded is the judge to whom this case is assigned and any member of the judge’s immediate family and judicial staff.

California Sub-Class: All individuals in the State of California who purchased, for personal, family, or household use, Morning Star Bamboo Flooring manufactured and sold by Lumber Liquidators, Inc. Excluded from the Class are Defendants, their legal representatives, assigns and successors and any entity in which Defendants have a controlling interest. Also excluded is the judge to whom this case is assigned and any member of the judge’s immediate family and judicial staff.

New York Sub-Class: All individuals in the State of New York who purchased, for personal, family, or household use, Morning Star Bamboo Flooring manufactured and sold by Lumber Liquidators, Inc. Excluded from the Class are Defendants, their

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<sup>9</sup> *Id.*

1 legal representatives, assigns and successors and any entity in  
 2 which Defendants have a controlling interest. Also excluded is  
 the judge to whom this case is assigned and any member of the  
 judge's immediate family and judicial staff.

3 Illinois Sub-Class: All individuals in the State of Illinois who  
 4 purchased, for personal, family, or household use, Morning Star  
 Bamboo Flooring manufactured and sold by Lumber Liquidators,  
 5 Inc. Excluded from the Class are Defendants, their legal  
 representatives, assigns and successors and any entity in which  
 6 Defendants have a controlling interest. Also excluded is the  
 judge to whom this case is assigned and any member of the  
 judge's immediate family and judicial staff.

8 West Virginia Sub-Class: All individuals in the State of West  
 9 Virginia who purchased, for personal, family, or household use,  
 Morning Star Bamboo Flooring manufactured and sold by  
 Lumber Liquidators, Inc. Excluded from the Class are  
 10 Defendants, their legal representatives, assigns and successors  
 and any entity in which Defendants have a controlling interest.  
 Also excluded is the judge to whom this case is assigned and any  
 member of the judge's immediate family and judicial staff.

13 Minnesota Sub-Class: All individuals in the State of Minnesota  
 14 who purchased, for personal, family, or household use, Morning  
 Star Bamboo Flooring manufactured and sold by Lumber  
 Liquidators, Inc. Excluded from the Class are Defendants, their  
 legal representatives, assigns and successors and any entity in  
 15 which Defendants have a controlling interest. Also excluded is  
 the judge to whom this case is assigned and any member of the  
 judge's immediate family and judicial staff.

18 Pennsylvania Sub-Class: All individuals in the State of  
 19 Pennsylvania who purchased, for personal, family, or household  
 use, Morning Star Bamboo Flooring manufactured and sold by  
 Lumber Liquidators, Inc. Excluded from the Class are  
 20 Defendants, their legal representatives, assigns and successors  
 and any entity in which Defendants have a controlling interest.  
 Also excluded is the judge to whom this case is assigned and any  
 member of the judge's immediate family and judicial staff.

23 Florida Sub-Class: All individuals in the State of Florida who  
 24 purchased, for personal, family, or household use, Morning Star  
 Bamboo Flooring manufactured and sold by Lumber Liquidators,  
 Inc. Excluded from the Class are Defendants, their legal  
 representatives, assigns and successors and any entity in which  
 25 Defendants have a controlling interest. Also excluded is the  
 judge to whom this case is assigned and any member of the  
 judge's immediate family and judicial staff.

1 judge to whom this case is assigned and any member of the  
2 judge's immediate family and judicial staff.

3 Claims for personal injury are specifically excluded from the Class.

4 150. Numerosity (Rule 23(a)(1)). Although the actual size of the Class is uncertain,  
5 Plaintiffs are informed and believes the Class is comprised of many of thousands of property  
6 owners throughout the United States, making joinder impractical. The disposition of the claims  
7 of these Class Members in a single class action will provide substantial benefits to all parties  
8 and to the Court.

9 151. Communality (Rule 23(a)(2)). There exist questions of law and fact common to  
10 all Class Members. Common questions include, but are not limited to, the following:

11 a. Whether the Product is subject to premature failure well in advance of its  
12 represented thirty-year useful life;

13 b. Whether the Product is not suitable for use as a long-term flooring  
14 product;

15 c. Whether Defendant knew, or should have known, of the defective nature  
16 of the Product before making available for purchase and use by the Plaintiffs and Class  
17 Members;

18 d. Whether Defendant failed to disclose to Plaintiffs and Class Members  
19 the defective nature of the Product;

20 e. Whether Defendant, through making misleading representations of  
21 material facts regarding the Product's hardness and omitting other material facts regarding the  
22 particular susceptibility of the Product to cupping, warping, scratching, denting, and other  
23 defects, had a duty to disclose full information regarding the Product's characteristics;

24 f. Whether California law applies nationwide;

25 g. Whether Defendant's failure to disclose material facts violated Business  
26 Professions Code Section 17200;  
27

1           h.       Whether Defendant's warranty practices, by repeatedly concealing the  
2 true nature of the defects in the Product through the use of diversionary tactics and false  
3 investigative reports, violated Business & Professions Code Section 17200;

4           i.       Whether Defendant's failure to inform purchasers that the Product was  
5 susceptible to the failures alleged herein was a material omission, the nondisclosure of which  
6 was a deceptive sales practice under the consumer protection statutes of applicable state law;

7           j.       Whether Defendant owed a duty to Plaintiffs and Class Members to  
8 exercise reasonable and ordinary care in the testing, design, production, manufacturing,  
9 warranting and marketing of the Product;

10          k.       Whether Defendant breached its duties to the Plaintiffs and Class  
11 Members by designing, manufacturing, producing, marketing, advertising, and selling defective  
12 flooring to Plaintiffs and Class Members;

13          l.       Whether Defendant had a duty to Plaintiffs and Class Members to  
14 disclose the true nature of the Product;

15          m.       Whether the facts not disclosed by Defendant to Plaintiffs and Class  
16 Member are material facts;

17          n.       Whether Defendant knew, or should have known that the Product would  
18 prematurely fail, is not suitable for use as flooring in residences or businesses, and is otherwise  
19 is not as represented by Defendant;

20          o.       Whether Defendant violated California's Consumers Legal Remedies  
21 Act (California Civil Code § 1750 *et seq.*), when it concealed, made partial misleading  
22 representations, or failed to disclose the true nature of the Product, and led consumers to  
23 believe, through its advertising, warranties, and other express representations that the Product  
24 had characteristics that it did not actually have;

1           p.       Whether, in committing the acts alleged herein, Defendant engaged in  
2 unfair competition and in an unfair business practice or practices within the meaning of  
3 California Business and Professions Code § 17200;

4           q.       Whether such acts or practices were illegal, unfair, or fraudulent within  
5 the meaning of California Business and Professions Code § 17200;

6           r.       Whether Plaintiffs and Class Members are entitled to compensatory  
7 damages, restitution, and the amounts thereof respectively;

8           s.       Whether Defendant should be declared financially responsible for  
9 notifying all Class Members of the defective Product and for the costs and expenses of repair  
10 and replacement of all defective flooring materials and providing restitution of monies paid and  
11 inadequate value given;

12          t.       Whether Defendant should be ordered to disgorge, for the benefit of  
13 Class Members, all or part of their ill-gotten profits received from the sale of defective Product  
14 and/or to make full restitution to Plaintiffs and Class Members; and

15          u.       Whether Defendant should be enjoined from continuing to market the  
16 Product, as defined herein, utilizing misleading misrepresentations and omission of material  
17 facts.

18       152.   Typicality (Rule 23(a)(3)). The claim of the representative Plaintiffs are typical  
19 of the claims of Class Members, in that the representative Plaintiffs, like all Class Members,  
20 own a structure in which the defective Product was installed and failed prematurely. The  
21 representative Plaintiffs, like all Class Members, have suffered a common injury: Plaintiffs  
22 will incur the cost of repairing and/or replacing the defective Product in their homes and  
23 repairing any resultant consequential damage to other building components. The factual basis  
24 of Defendant's misconduct is common to all Class Members.

25       153.   Adequacy (Rule 23(a)(4)). Plaintiffs will fairly and adequately represent and  
26 protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in  
27

1 prosecuting consumer class actions, including actions involving defective building products,  
 2 failure to disclose material information regarding product performance, and violation of  
 3 consumer protection statutes. Plaintiffs and their counsel are committed to vigorously  
 4 prosecuting this action on behalf of the Class and have the financial resources to do so. Neither  
 5 Plaintiffs nor their counsel have any interests adverse to those of the Class.

6 154. Predominance of Common Questions (Rule 23(b)(3)). Common questions of  
 7 law and fact predominant over any questions involving individualized analysis.  
 8 Fundamentally, there are no material questions of fact or law that are not common to Class  
 9 Members. Common issues of fact include: All Class Members purchased the same Product and  
 10 received the same misrepresentations, evasions, and omissions. California law may apply  
 11 nationwide. In the alternative, state law applies to each state-only subclass. The performance  
 12 of the Product relative to its represented qualities is a common question, as is the Defendant's  
 13 knowledge regarding the Product performance and Defendant's uniform omission to Class  
 14 Members of these material facts. Common questions of law include whether Defendant's  
 15 conduct violates California's consumer protection statutes and other law, and the Class  
 16 Members' entitlement to damages and remedies.

17 155. Superiority (Rule 23(b)(3)). Plaintiffs and Class Members have all suffered and  
 18 will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful  
 19 conduct. A class action is superior to other available methods for the fair and efficient  
 20 adjudication of the subject controversy. Because of the relatively small size of the individual  
 21 Class Members' claims, most Class Members likely would find the cost of litigating their  
 22 individual claims to be prohibitive and will have no effective remedy at law. Thus, absent a  
 23 class action, Class Members will continue to incur damages and Defendant's misconduct will  
 24 proceed without remedy. The class treatment of common questions of law and fact is also  
 25 superior to multiple individual actions or piecemeal litigation in that it conserves the resources  
 26 of the courts and the litigants and promotes consistency and efficiency of adjudication. There  
 27

1 is no impediment to the management of this action because of the virtual identity of the  
2 common questions of law and fact to all Class Members.

3 156. Injunctive Relief (Rule 23(b)(2)). Defendant has engaged and continues to  
4 engage in business practices which are unfair, unlawful, and/or fraudulent in violation of  
5 California's Unfair Competition Law (Business & Professions Code §§ 17200 *et seq.*) and the  
6 False Advertising Law (Business & Professions Code §§ 17500 *et seq.*) by, among other things,  
7 advertising and representing that the Product has characteristics and benefits, such as a  
8 hardness, durability, freedom from scratching and denting, maintenance free system, or  
9 longevity, that it does not.

10 157. Plaintiffs seek class-wide injunctive relief on grounds consistent with the  
11 standards articulated in Rule 23(b)(2) that establish final injunctive relief as an appropriate  
12 class-wide remedy, in that Defendant continues to advertise the Product, continues to provide  
13 half-truths and misleading information about the Product, and continues to omit to disclose  
14 material facts regarding the Product.

15 **ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS**

16 158. Defendant knew or reasonably should have known that the Product was  
17 defective before its sale. Defendant intentionally concealed material truths and disclosed half-  
18 truths while at the same time concealing material information that would have corrected  
19 consumers' perceptions, concerning the Product from the general public and Class Members,  
20 while continuing to falsely represent that the Product is free of defects, harder than hardwood  
21 or red oak, exceptionally durable, long-lasting, scratch and dent resistant, and fit for its  
22 intended use.

23 159. Defendant affirmatively represented to the general public the Product carried a  
24 thirty-year (30) warranty. Through these representations, Defendant created a reasonable  
25 expectation among ordinary consumers and in the construction trades that the Product would  
26 have a useful life of at least thirty (30) years.  
27



1 Defendant violated the CLRA when it advertised the Product with the intent not to sell it as  
2 advertised.

3 166. Defendant's deceptive practices were specifically designed to induce Plaintiffs  
4 and Class Members to purchase the Product. Defendant engaged in marketing efforts as  
5 detailed in the general allegations, to reach Class Members, their agents, and/or third parties on  
6 whom they relied to persuade them to purchase and install the Product manufactured by  
7 Defendant, or to purchase homes and other structures in which the defective Product  
8 manufactured by Defendant has been installed.

9 167. To this day, Defendant continues to engage in unlawful practices in violation of  
10 the CLRA. Defendant continues to conceal the defective nature of the Product, make  
11 misleading statements about the Product, and has omitted to disclose, on inquiry from Plaintiffs  
12 and Class Members, the Product's defective propensities.

13 168. Plaintiffs served Defendant with notice of their violation of the CLRA by  
14 serving notice on their General Counsel by certified mail to their corporate offices, on  
15 September 4, 2014. A copy of this notice is attached hereto as Exhibit A.

16 WHEREFORE, Plaintiffs on behalf of themselves and for all others similarly situated,  
17 demand a permanent injunction be issued against Defendant to refrain from continued  
18 advertising of the Product at issue herein that omits material facts about product performance,  
19 injunctive relief forcing Defendant to replace and repair all Product at issue herein for Class  
20 Members, consequential damages for Class Members who have replaced or will replace the  
21 Product at issue herein, plus costs and attorneys' fees pursuant to California Civil Code  
22 §1780(d).

23 **SECOND CAUSE OF ACTION**

24 **(Violation of Unfair Competition Law- Unlawful Business Practice)**

25 169. Plaintiffs hereby incorporate by reference the allegations contained in all  
26 preceding paragraphs of this Complaint.  
27

1 170. California Business and Professions Code §17200 *et seq.* prohibits acts of unfair  
2 competition, which includes unlawful business practices.

3 171. Defendant engaged in unlawful business practices in that Defendant represented,  
4 through its advertising, warranties, and other express representations that the Product had  
5 characteristics it did not actually have and provided misleading information to Plaintiffs and  
6 Class Members about the Product while omitting to disclose information about other  
7 characteristics of the Product that cause it to scratch and dent easily and manifest other defects.

8 172. Defendant violated § 17200 when Defendant falsely represented the Product was  
9 of a particular standard or quality, including representations that the Product met industry  
10 standards, “does not scratch easily,” “virtually scratch and dent resistant,” and “two to two and  
11 a half times harder than red oak.” Defendant further violated the Unfair Competition Law  
12 when it unlawfully tested, designed, manufactured, formulated, sold, and introduced in the  
13 stream of commerce for purchase by Plaintiffs, Class Members, and the general public, the  
14 defective Product.

15 173. Defendant’s deceptive practices constitute an unlawful business practice in that  
16 the practices were specifically designed to induce Plaintiffs, Class Members, and their agents or  
17 third parties upon whom Plaintiffs and Class Members’ relied to provide appropriate guidance  
18 regarding suitable flooring products, to purchase on Class Members’ behalf the Product and  
19 install the Product, recommend the use of the Product, or to purchase homes and other  
20 structures in which the Product has been installed.

21 174. To this day, Defendant has engaged and continues to engage in unlawful  
22 business practices by concealing the defective nature of the Product and have knowingly  
23 misrepresented to Class Members the Product possess qualities and characteristics it does not  
24 have.

25 175. As a direct and proximate cause of Defendant’s unfair and unlawful methods of  
26 competition and unfair, deceptive or unlawful acts or practices, Plaintiffs and Class Members  
27

1 have suffered actual damages in that they own homes and other structures on which defective  
 2 Product is or was installed. The Product has failed and will continue to prematurely fail due to  
 3 its poor design, poor manufacture, and unsuitability for its intended purpose, which will require  
 4 (or has already required) Plaintiffs and Class Members to incur costs to prematurely repair  
 5 and/or replace their floorings.

6 176. As a proximate result of their unlawful, unfair, or fraudulent practices,  
 7 Defendant has been unjustly enriched and should be required to make restitution to the  
 8 Plaintiffs and Class Members pursuant to §§ 17203 and 17204 of the California Business &  
 9 Professions Code.

10 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,  
 11 demand judgment against Defendant, and each of them, for restitution and/or disgorgement of  
 12 funds paid to Defendant by Plaintiffs and Class Members to purchase the Product, or the value  
 13 of the product in their home or structure, or in the form of repair and/or replacement of the  
 14 defective Product on the Class Members' homes and other structures.

### 15 **THIRD CAUSE OF ACTION**

#### 16 **(Violation of Unfair Competition Law – Unfair Business Practice)**

17 177. Plaintiffs hereby incorporate by reference the allegations contained in all  
 18 preceding paragraphs of this complaint.

19 178. Defendant engaged in an unfair business practice by failing to disclose material  
 20 facts concerning the Product, and representing, through advertising, warranties and other  
 21 representations that the Product had particular qualities, including, that the Product met  
 22 industry standards, “does not scratch easily,” and is “two to two and a half times harder than  
 23 red oak,” all qualities that were inconsistent with Defendant’s knowledge of Product  
 24 performance.

25 179. Defendant’s “unfair” practices were designed to induce Plaintiffs and Class  
 26 Members, or their agents, and/or third parties upon whom Plaintiffs and Class Members relied  
 27 to provide appropriate flooring products, to purchase and install the Product, recommend the

1 use of the Product, or to purchase homes and other structures on which the Product has been  
2 installed.

3 180. To this day, Defendant has failed to disclose facts concerning the Product  
4 performance, facts that would be and are material to the consumer or those third parties, such as  
5 flooring contractors and general contractors, on whom the consumer relies.

6 181. As a direct and proximate cause of Defendant's unfair methods of competition  
7 and unfair or deceptive acts or practices, Plaintiffs and Class Members have suffered actual  
8 damages in that they own homes and other structures in which defective Product is or was  
9 installed. The Product will prematurely fail due to inadequate product testing, poor design  
10 and/or manufacturing techniques, and poor installation guidelines, which will require Plaintiffs  
11 and Class Members to incur costs to prematurely repair and/or replace their flooring.

#### 12 **FOURTH CAUSE OF ACTION**

#### 13 **(Violation of New York General Business Law § 349)**

14 182. Plaintiffs hereby incorporate by reference the allegations contained in all  
15 preceding paragraphs of this complaint.

16 183. Plaintiff Massaro is a "person" and "consumer" under New York General  
17 Business Law § 349.

18 184. Defendant engaged in deceptive practices related to the sale of its Product,  
19 including consciously failing to disclose material facts regarding the defective nature of the  
20 Product to Plaintiff Massaro and New York Sub-Class Members, and misrepresenting to  
21 Plaintiff Massaro and New York Sub-Class Members the appearance durability characteristics  
22 of their Product.

23 185. Contrary to Defendant's representations, the Product degrades far in advance of  
24 its purported useful life as represented through its 30 year warranty.

25 186. The deceptive acts and practices engaged in by Defendant were and are  
26 consumer-oriented.  
27

1           187. Defendant knew that the Product was defectively developed, designed, or  
2 manufactured.

3           188. Defendant knew that the Product, at the time of leaving Defendant's control,  
4 contained defects because it cracked, suffered gapping, discolored, lost scratch- and stain-  
5 resistance, and lost durability under normal conditions in which it was installed. At the time of  
6 sale, the Product contained design and construction defects that resulted in deterioration. The  
7 defects reduced the effectiveness and performance of the Product and rendered it unable to  
8 perform the ordinary purposes for which it was used.

9           189. Defendant's unconscionable conduct alleged herein included the omission and  
10 concealment of material facts and misrepresentations concerning its Product.

11           190. Defendant was in a superior position to know, and actually did know, the true  
12 facts about the hidden defects of the Product and the known chemical degradation it would  
13 suffer.

14           191. Defendant intended that Plaintiff Massaro and New York Sub-Class Members  
15 would rely on the acts of concealment, omissions, and misrepresentations regarding the nature  
16 of the Product, so that Plaintiff Massaro and New York Sub-Class Members would purchase  
17 the defective product. Had Defendant disclosed all the material information regarding the  
18 Product to Plaintiff Massaro and New York Sub-Class Members, they would have considered  
19 that information material to their decision to purchase Defendant's Product at the price charged.

20           192. These deceptive acts and practices were committed in conduct of business,  
21 trade, commerce, or the furnishing of a service in the state of New York. Defendant's conduct  
22 was not a unique, one-time occurrence without possibility of replication or recurrence and  
23 without implication for the broader consuming public. To the contrary, the deceptive conduct  
24 set forth herein is part of a regular and recurring practice that impacts all of New York Sub-  
25 Class Members.

193. Defendant acted willfully, knowingly, intentionally, unconscionably, and with reckless indifference when it committed these acts of deception.

194. As a direct and proximate cause of the violation of NY GBL § 349, described above, Plaintiff Massaro and New York Sub-Class Members have been injured in that they have purchased the Product based on nondisclosure of material facts alleged above.

195. As a result of Defendant's practices in violation of NY GBL § 349, Plaintiff Massaro and the other New York Sub-Class Members suffered an ascertainable loss in the form of monies paid to Defendant for Product that, contrary to Defendant's representations, has prematurely failed or will prematurely fail before the end of its useful life.

196. Plaintiff Massaro and New York Sub-Class Members are entitled to recover such damages and appropriate penalties (including attorneys' fees, and costs of suit) permitted under the law.

#### **FIFTH CAUSE OF ACTION**

##### **(Violation of Illinois Consumer Fraud and Deceptive Business Practices Act)**

197. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

198. The conduct described in this Complaint constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.* (the "CFA"), and substantially similar state consumer protection statutes.

199. Defendant engaged in unfair or deceptive practices in violation of the CFA when it (1) represented that the Product was durable and free of defects and ASTM acceptable when, at best, it lacked credible evidence to support those claims, and, at worst, knew the Product would fail prematurely, was not suitable for use as flooring, and otherwise was not as warranted and represented by Defendant; (2) failed to disclose to, or concealed from, consumers, installers, and distributors material facts about the defective nature of the Product; (3) failed to disclose its own knowledge of the defective nature of the Product; and (4) limited

1 its warranty obligations in an unfair and unconscionable way in light of its failure to disclose  
2 the defective nature of the Product.

3 200. Defendant either knew or should have known its Product was defective, would  
4 fail prematurely, and was not as warranted and represented by Defendant.

5 201. Defendant's conduct and omissions described herein repeatedly occurred in  
6 Defendant's trade or business and were capable of deceiving a substantial portion of the  
7 consuming public.

8 202. The facts concealed or not disclosed by Defendant are material facts in that  
9 Plaintiff Mendez, Illinois Sub-Class Members, and any reasonable consumer would have  
10 considered those facts important in deciding whether to purchase the Product or purchase  
11 homes or structures with flooring applying the Product. Had Plaintiff Mendez and Illinois Sub-  
12 Class Members known the Product was defective (and did not meet ASTM or other flooring  
13 industry standards), they would not have purchased the Product or they would have either  
14 negotiated additional warranty coverage, negotiated a lower price to reflect the risk or simply  
15 avoided the risk all together by purchasing different flooring products.

16 203. Defendant intended that Plaintiff Mendez and Illinois Sub-Class Members  
17 would rely on the deception by purchasing its Product, unaware of the undisclosed material  
18 facts. Defendant knew that Plaintiff Mendez and Illinois Sub-Class Members would rely on its  
19 product literature and advertisements, statements made by its salespeople and other  
20 representations. This conduct constitutes consumer fraud within the meaning of the various  
21 consumer protection statutes.

22 204. Defendant's unlawful conduct is continuing, with no indication that Defendant  
23 will cease.

24 205. As a direct and proximate result of the deceptive, misleading, unfair, and  
25 unconscionable practices of Defendant set forth above, Plaintiff Mendez and Illinois Sub-Class  
26  
27

1 Members are entitled to actual damages, compensatory damages, penalties, and attorney's fees  
2 and costs as set forth in Section 10a of the CFA.

3 206. The Defendant's deceptive, misleading, unfair and unconscionable practices set  
4 forth above were done willfully, wantonly and maliciously entitling Plaintiff Mendez and  
5 Illinois Sub-Class Members to an award of punitive damages.

6 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

7 **SIXTH CAUSE OF ACTION**

8 **SIXTH CAUSE OF ACTION**  
9 **(Violation of Pennsylvania Unfair Trade Practices & Consumer Protection Law)**

10 207. Plaintiffs hereby incorporate by reference the allegations contained in all  
11 preceding paragraphs of this complaint.

12 208. This Count is brought by Plaintiff Fursman on behalf of himself and  
13 Pennsylvania Sub-Class Members.

14 209. At all times relevant hereto, Plaintiff Fursman and Pennsylvania Sub-Class  
15 Members were "persons" within the meaning of 73 P.S. § 201-2(3).

16 210. Defendant's conduct, as alleged herein, constituted unfair or deceptive acts or  
17 practices and unfair methods of competition in trade or commerce (within the meaning of  
18 73 P.S. § 201-2(4)), in violation of 73 P.S. § 201-3, and regulations promulgated thereunder,  
19 including the following types of conduct specified in 73 P.S. § 201-2:

20 a. Representing that goods or services have characteristics or ingredients  
21 that they do not have (§ 201-2(vi));

22 b. Representing that goods are of a particular standard, quality or grade, if  
23 they are of another (§ 201-2(vii));

24 c. Advertising goods or services with intent not to sell them as advertised  
25 (§ 201-2(ix)); and

1 d. Engaging in fraudulent or deceptive conduct that creates a likelihood of  
2 confusion or misunderstanding (§ 201-2(xxi)).

3 211. Defendant's unfair and deceptive acts and practices (including conduct  
4 prohibited by the provisions cited in subparagraphs (a) through (e) above), as alleged in greater  
5 detail herein, include, but are not limited to: (1) representations that the Product was durable,  
6 free of defects, and more water resistant than hardwood when, at best, it lacked credible  
7 evidence to support those claims, and, at worst, knew the Product would fail prematurely, was  
8 not suitable for use as flooring, and otherwise was not as represented by Defendant; (2) failed  
9 to disclose to, or concealed from, consumers, installers, and distributors material facts about the  
10 defective nature of the Product; and (3) failed to disclose its own knowledge of the defective  
11 nature of the Product.

12 212. As a result of Defendant's unfair and deceptive acts and practices, Plaintiff  
13 Fursman and Pennsylvania Sub-Class Members have suffered ascertainable losses of money or  
14 property within the meaning of 73 P.S. § 201-9.2, which they seek for restitution and/or  
15 disgorgement of funds paid to Defendant by Plaintiff Fursman and Pennsylvania Sub-Class  
16 Members to purchase the Product, or the value of the product in their home or structure, or in  
17 the form of repair and/or replacement of the defective Product on Plaintiff Fursman's and  
18 Pennsylvania Sub-Class Members' homes and other structures.

19 213. Plaintiff Fursman and Pennsylvania Sub-Class Members are entitled to recover  
20 these actual damages or statutory damages of \$100, whichever is greater, plus multiple  
21 damages.

## 22 SEVENTH CAUSE OF ACTION

### 23 **(Violation of Minnesota Consumer Fraud Act, M.S.A. § 325F.68, et seq.)**

24 214. Plaintiffs hereby incorporate by reference the allegations contained in all  
25 preceding paragraphs of this complaint.

26 215. This Count is brought by Plaintiff Norris on behalf of herself and Minnesota  
27 Sub-Class Members.

1           216. At all times relevant hereto, Defendant was a “person” within the meaning of  
2 M.S.A. § 325F.68(3).

3           217. Defendant’s conduct, as alleged herein, constitutes unlawful practices, in  
4 violation of M.S.A. § 325F.69 subd. 1, including fraud, false pretense, false promises,  
5 misrepresentations, misleading statements, and/or deceptive practices, with the intent that  
6 others rely thereon, in connection with the sale of the Product to Plaintiff Norris and Minnesota  
7 Sub-Class Members.

8           218. Defendant’s unlawful practices (including fraud, misrepresentation, and  
9 deceptive practices prohibited by § 325F.69 subd. 1)), as alleged in greater detail herein,  
10 include, but are not limited to: (1) representations that the Product was more durable than  
11 hardwood and laminate and free of defects when, at best, it lacked credible evidence to support  
12 those claims, and, at worst, knew the Product would fail prematurely, was not suitable for use  
13 as flooring, and otherwise was not as warranted and represented by Defendant; (2) failed to  
14 disclose to, or concealed from, consumers, installers, and distributors material facts about the  
15 defective nature of the Product; and (3) failed to disclose its own knowledge of the defective  
16 nature of the Product.

17           219. As a result of Defendant’s fraud, misrepresentation, and deceptive practices,  
18 Plaintiff Norris and Minnesota Sub-Class Members have suffered injury within the meaning of  
19 M.S.A. § 8.31 subd. 3a, which they seek restitution and/or disgorgement of funds paid to  
20 Defendant by Plaintiff Norris and Minnesota Sub-Class Members to purchase the Product, or  
21 the value of the Product in their home or structure, or in the form of repair and/or replacement  
22 of the defective Product on Plaintiff Norris’ and Minnesota Sub-Class Members’ homes and  
23 other structures.

24           220. Plaintiff Norris and Minnesota Sub-Class Members also seek injunctive relief  
25 pursuant to M.S.A. § 8.31 subd. 3a, directing Defendant to cease the unlawful practices alleged  
26 herein and to issue corrective statements and advertising.  
27

221. Plaintiff Norris and Minnesota Sub-Class Members are entitled to bring an action for damages and injunctive under M.S.A. § 8.31 subd. 3a, because this action has a public benefit. The public benefit of this action is demonstrated by at least the following:

a. This action seeks injunctive relief in order to stop Defendant from continuing to engage in the fraud, false pretense, false promises, misrepresentations, misleading statements, and/or deceptive practices alleged herein, and to issue corrective statements and advertising, in an effort to protect Minnesota Sub-Class Members and members of the public; and

b. Members of the public have been and are concerned about the quality and safety of the Product, as evidenced by, among other things, the thousands of complaints by consumers that can be found on the Internet regarding its defective nature.

**EIGHTH CAUSE OF ACTION**  
**(Violation of West Virginia's Consumer Credit and Protection Act, W. Va. Code**  
**§§ 46A-6 et seq.)**

222. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

223. Defendant published, disseminated and/or circulated oral and written information and matter that tended to and/or did induce, directly and indirectly West Virginia residents, including Plaintiff Emery and West Virginia Sub-Class Members to enter into contracts and agreements to purchase the Product.

224. Defendant, acting directly or by agents, servants, employees, conspirators and/or joint ventures set about to sell, offer for sale, and attempt to sell in West Virginia, for cash or credit, the Product.

225. That the defendants acting as aforesaid set about to and did engage in unfair methods of competition and unfair or deceptive practices as set forth in West Virginia Code 46-A-6-102, including, but not limited to:

The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

Advertising, printing, displaying, publishing, distributing, or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods...which is false, misleading, or deceptive, or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

Engaging in any other conduct which similarly creates a likelihood of confusion of misunderstanding.

226. That the acts and conduct above violated West Virginia Code, Chapter 46A, Article 6, Section 101, *et seq.* in that Defendant engaged in unfair and deceptive acts or practices, including, but not limited to, engaging in part of a scheme or plan to sell the Product to the public without disclosing that it was not made from the “hardest wood,” that bamboo is not a wood but is actually a grass that is fibrous and flooring made from it is susceptible to scratching and denting, and that the Product was not otherwise free from defects. These acts and practices had the capacity to deceive a substantial portion of the public.

227. As a proximate result of the violation by defendants of the aforesaid statute, Plaintiff Emery and West Virginia Sub-Class Members suffered an ascertainable loss of money or property and Plaintiff Emery and West Virginia Sub-Class Members are entitled to recover damages all as provided in West Virginia Code, 46A-6-106.

**NINTH CAUSE OF ACTION**  
**(Violation of Florida’s Deceptive and Unfair Trade Practices Act**  
**Florida Statute § 501.201 *et seq.* (“FDUTPA”))**

228. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

1           229. This cause of action is brought pursuant to the Florida Deceptive and Unfair  
2 Trade Practices Act, Fla. Stat. § 501.201 *et seq.* The stated purpose of this Act is to “protect  
3 the consuming public . . . from those who engage in unfair methods of competition, or  
4 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”  
5 *Id.* §501.202(2).

6           230. Plaintiff Triana and Florida Sub-Class Members are “consumers” and the  
7 transactions at issue in this complaint constitute “trade or commerce” as defined by FDUTPA.  
8 *See id.* § 501.203(7)-(8).

9           231. FDUTPA declares unlawful “[u]nfair methods of competition, unconscionable  
10 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or  
11 commerce.” *Id.* § 501.204(1)

12           232. Defendant violated FDUTPA by representing to Plaintiff Triana and Florida  
13 Sub-Class Members that the Product had particular qualities, including that the Product was  
14 “very stable,” was “two-and-a-half times harder than hardwood flooring,” and, by virtue of  
15 being “carbonized” and/or treated “under extreme heat and pressure,” was “much harder than  
16 traditional bamboo”—when in fact Defendant knew that the Product did not possess these  
17 qualities.

18           233. Furthermore, Defendant employed fraud, deception, false promise,  
19 misrepresentation, and the knowing concealment, suppression, or omission of material facts in  
20 its sale and advertisement of the Product in the State of Florida by: (1) representing that the  
21 Product was durable and free of defects and ASTM acceptable when, at best, Defendant lacked  
22 credible evidence to support those claims, and, at worst, Defendant knew the Product would  
23 fail prematurely and was not suitable for use as flooring; (2) failing to disclose to, or concealing  
24 from, consumers, installers, and distributors material facts about the defective nature of the  
25 Product; and (3) failing to disclose its own knowledge of the defective nature of the Product.  
26  
27

1           234. Plaintiff Triana and the Florida Sub-Class Members directly or indirectly relied  
2 upon Defendant's representations regarding the quality of the Product in their purchase  
3 decisions.

4           235. Plaintiff Triana and the Florida Sub-Class Members were misled by Defendant's  
5 misrepresentations and omissions because they believed that the Product was harder, stronger,  
6 more durable, and more stable than other flooring materials and other bamboo flooring  
7 products.

8           236. As a direct and proximate result of the FDUTPA violations described above,  
9 Plaintiff Triana and the Florida Sub-Class Members have been injured in that they purchased  
10 the defective Product or purchased homes or other structures with the defective Product, based  
11 on the misrepresentations and nondisclosures of material facts alleged above.

12           237. Had Plaintiff Triana and the Florida Sub-Class Members known the defective  
13 nature of the Product and the truth concerning Defendant's claims, they would not have  
14 purchased or would not have paid what they did for the Product or their structures.

15           238. As a result of Defendant's practices in violation of FDUTPA, Plaintiff Triana  
16 and Florida Sub-Class Members suffered an ascertainable loss in the form of monies paid to  
17 Defendant for the Product that, contrary to Defendant's representations, prematurely failed.

18           239. Accordingly, Plaintiff Triana and Florida Sub-Class Members are entitled to  
19 such damages, as well as equitable relief, costs, reasonable attorney's fees, and other relief, as  
20 are permitted under the law.

#### 21           **PRAYER FOR RELIEF**

22           WHEREFORE, Plaintiffs pray that the Court enter judgment against Defendant, and  
23 each of them, and in favor of Plaintiffs, and to award the following relief:

24           1.Certification of the proposed Class nationwide class applying California law  
25 nationwide and appointing Dana Gold, Tammy Emery, Edwin Mendez, Christopher Massaro,  
26 Laura Norris, and Donald Fursman as Class representatives;  
27

1           2. In the alternative, should the Court find that California law does not apply on a  
2 nationwide basis, certification of the following state law sub-classes:

3           a.       A California only subclass and appointing Dana Gold as subclass  
4 representative;

5           b.       A West Virginia only subclass and appointing Tammy Emery as subclass  
6 representative;

7           c.       An Illinois only subclass and appointing Edwin Mendez as subclass  
8 representative;

9           d.       A New York only subclass and appointing Christopher Massaro as  
10 subclass representative;

11          e.       An Minnesota only subclass and appointing Laura Norris as subclass  
12 representative;

13          f.       A Pennsylvania only subclass and appointing Donald Fursman as  
14 subclass representative; and

15          g.       A Florida only subclass and appointing John Triana as subclass  
16 representative;

17          3.       Appointment of the undersigned as counsel for the proposed Class(es);

18          4.       A declaration that Defendant's actions complained of herein violate the state  
19 consumer protection statutes.

20          5.       A declaration that Defendant is financially responsible for notifying all Class  
21 Members;

22          6.       Injunctive relief requiring Defendant to replace and/or repair all Products  
23 installed in structures owned by the Class;

24          7.       A declaration that Defendant must disgorge, for the benefit of the Class, all or  
25 part of its ill-gotten profits received from the sale of defective Product, and/or to make full  
26 restitution to Plaintiffs and the Class Members;

8. An award of costs and attorneys' fees, as allowed by law, and/or from a common fund created hereby; and

9. Leave to amend this Complaint to conform to the evidence presented at trial; and

10. Orders granting such other and further relief as may be appropriate under the circumstances.

**JURY TRIAL DEMAND**

Plaintiffs hereby demand a jury trial for all individual and Class claims so triable.

RESPECTFULLY SUBMITTED AND DATED this 20th day of January, 2016.

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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on January 20, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 20th day of January, 2016.

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